

REMARKS/ARGUMENTS

Reconsideration of this application in light of the above amendments and following comments is courteously solicited.

Initially, Applicant submits herewith a Terminal disclaimer over U.S. Patent 6,596,664 so as to remove the obvious double patenting rejection made by the examiner in paragraphs 4 and 5 of his office action.

With regard to the examiner's rejection of previously submitted 27 and 28 under 35 U.S.C. 102(e) as being anticipated by the Kittrell et al. '664 patent, Applicant respectfully requests the examiner to reconsider and withdraw this rejection. The instant application is a divisional application having an effective filing date of June 2, 1999. Accordingly, the filing date of the instant application is prior to the filing date of the '664 patent. Accordingly, the '664 patent does not constitute prior art. In light of the foregoing, the examiner's rejection of claims 27 and 28 based on the '664 patent is improper.

With regard to the rejection raised by the examiner of previously submitted claims 27 and 28 as set forth on Page 4, paragraph No. 9 Applicant comments as follows.

The rejection under 35 U.S.C. 102 as being anticipated by the Kramer et al. 6,086,749 patent is improper. The Board of Appeals reversed the examiner's rejection of the claims based on

the '749 patent. Accordingly, under the doctrine of *res judicata*, rejection of claims 27 and 28 under 35 U.S.C. 102 based on the '749 patent is improper and should be withdrawn.

With regard to the rejection of previously submitted claims 27 and 28 under 35 U.S.C. 103, Applicant respectfully requests the examiner to reconsider his position in light of the amendments made to independent claim 27.

The examiner in response to Applicant's arguments in the amendment filed August 24, 2005 sets forth on Page 6 the following:

"However, as pointed out in paragraph 9 above, since the catalyst of Kramer comprises all of the components recited in the presently claimed invention, the catalyst of Kramer would inherently be photocatalytic and would have been able to perform all the functions as presently claimed. Moreover, it has been within the skill in the art that titanium dioxide is photocatalytic. Thus, the presence of titanium dioxide in the catalyst of Kramer would make the catalyst photocatalytic."

The examiner's position is in error. The Board of Appeals reverse the examiner's rejection under 35 U.S.C. 102. Thus, the Board of Appeals concluded that the Kramer reference did not teach all of the components as recited in the claims. Thus, functionality can not be attributed as suggested by the examiner.

Claim 27 now sets forth with specificity the photocatalyst including a photocatalytically active support. It is respectfully submitted that the Kramer reference fails to render

obvious such a catalyst and the examiner's conclusion of obviousness is only a result of hindsight reconstruction. The catalyst of the Kramer et al. patent is not a photocatalyst but rather a catalyst used in high temperature hydroprocessing of hydrocarbon feedstocks to upgrade same to more useful products. One when viewing the teaching of Kramer et al. would not pick and choose the elements of the catalyst to produce a photocatalyst for purifying contaminated gas streams. The selection of the composition of the catalyst of the present invention from the Kramer et al. catalog of elements can only be reached when one views the instant disclosure. There is no suggestion of a photocatalyst nor a photocatalytically active support in the Kramer et al. reference. Accordingly, any rejection of amended claim 27 based on the Kramer et al. patent under 35 U.S.C. 103 would be untenable and belie the concept of a whole clause of same.

In light of the foregoing, it is submitted that all of the claims as pending patentably define over the art of record and an early indication of same is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in

this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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I, Rachel Piscitelli, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on October 27, 2005.

